

STATE OF MICHIGAN  
COURT OF APPEALS

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RICK HESSE,

Plaintiff/Counter-Defendant-  
Appellant,

v

SUPERIOR BUSINESS FORMS, INC.,

Defendant/Counter-Plaintiff-  
Appellee.

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UNPUBLISHED  
February 19, 2008

No. 274357  
Kalamazoo Circuit Court  
LC No. 05-000081-CZ

Before: Markey, P.J., and Meter and Murray, JJ.

MURRAY, J., (*dissenting*).

After reviewing de novo the legal issue of whether the contract between the parties was ambiguous, *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998), I would reverse the trial court because the contract at issue is not ambiguous. Accordingly, I respectfully dissent.

As the majority recognizes, a contract is ambiguous if its provisions can “reasonably be understood in different ways.” *Universal Underwriters Ins Co v Kreeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). The contract at issue in this case, drafted by defendant Superior Business Forms Inc., contains straightforward language regarding what compensation plaintiff would receive, and for how long.

Specifically, the first sentence of paragraph two of the contract states that defendant will pay to plaintiff a weekly amount as severance pay. The second sentence indicates when the weekly amount would be paid, and when the payments will commence. One of the pivotal sentences, the third one, indicates that, “in addition to the severance pay,” the defendant will reimburse plaintiff for his COBRA health insurance premium, “until December 31, 2004.” Finally, the fourth sentence unequivocally provides that defendant is obligated to make the severance payments until plaintiff obtains new employment, at which point they will automatically end.

What paragraph two does, then, is lay out what amount of severance pay defendant will pay to plaintiff, when it starts and when it will be paid (sentences one and two). The contract then addresses COBRA health premium reimbursement, which the parties recognized as another form of compensation by use of the introductory clauses “in addition to the severance pay.”

Finally, the contract provides different end dates for both payments. Considering all these sentences together, these provisions cannot reasonably be interpreted in any different manner. *Universal Underwriters Ins Co, supra*. And, because the contract is clear and unambiguous, parol evidence is not admissible to vary the terms of this contract. *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006).<sup>1</sup>

Consideration of parol evidence is all the more problematic because the contract also contained an integration and merger clause. When such a clause exists, parol evidence cannot be considered in the absence of allegations of fraud (and none are made here), and absent the contract clearly missing a contract provision. *UAW-GM, supra* at 494-495. Here, although the severance payments could have potentially been paid for an extended length of time, the contract nonetheless had a termination provision. Thus, the contract was not missing a necessary provision. Consequently, the trial court's consideration of parol evidence, and subsequent decision to modify the terms of the contract, was reversible error.

/s/ Christopher M. Murray

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<sup>1</sup> I recognize that some evidence suggests that plaintiff had proposed a 17-month severance deal, but the contract clearly provided for a different period.